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No. 78-579

In the Supreme Court of the United States

OCTOBER TERM, 1978

HENRY S. REUSS, PETITIONER

v.

JOHN J. BALLES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1A-27A) is not yet reported. The opinion of the district court (Pet. App. 31A-45A) is reported at 73 F.R.D. 90.

JURISDICTION

The judgment of the court of appeals (Pet. App. 29A-30A) was entered on July 7, 1978, and a petition for rehearing was denied on August 14, 1978. The petition for a writ of certiorari was filed on October 6, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether petitioner has standing, either as a legislator or as a bondholder, to challenge the composition of the Federal Open Market Committee of the Federal Reserve System.

STATEMENT

Petitioner is a member of the House of Representatives and the owner of marketable long-term bonds valued in excess of $20,000. He brought this action in the United States District Court for the District of Columbia seeking declaratory and injunctive relief from the allegedly unconstitutional composition of the Federal Open Market Committee of the Federal Reserve System.[1] Petitioner contended that the five "Reserve Bank" members of the Committee were serving illegally because they were not nominated by the President and confirmed by the Senate.

Petitioner alleged that he had standing to assert this claim on the basis of three theories. First, he alleged that, as a House member, his power to initiate impeachment proceedings against these five officials would be or remain adversely affected unless they were appointed by the President with Senate confirmation. Second, he alleged that his interest in legislative regulation of monetary policy would be or remain adversely affected unless the

[1]The Federal Open Market Committee directs the open market operations of the Federal Reserve System. 12 U.S.C. 263(b), (c). The Committee is composed of the seven members of the Board of Governors of the Federal Reserve System (who are appointed by the President, subject to Senate confirmation) and five representatives (either the president or first vice-president) of the regional Reserve Banks (who have been appointed by the boards of directors of those banks, with the approval of the Board of Governors, and are then elected to their positions on the Committee). 12 U.S.C. 263(a) and 341.

five Reserve Bank members were either removed from office or appointed by the President with Senate confirmation. Third, he alleged that actions of the Committee "can substantially and adversely affect" the value of his bonds (Pet. App. 16A n.23). The district court held that none of these interests is sufficient to establish standing, and it accordingly dismissed the complaint (*id.* at 31A-45A).

The court of appeals affirmed (Pet. App. 1A-21A). The court held that petitioner had not alleged any injury to his interest in the power of impeachment since, aside from the absence of any suggestion of current or imminent wrongdoing by the five Reserve Bank members, there was nothing to indicate that petitioner could not initiate impeachment proceedings at an appropriate time (*id.* at 13A-15A).[2] The court also concluded that petitioner's interest in legislative regulation of monetary policy would not be affected by the relief sought because the Committee would continue to exercise the same substantive regulatory powers even if the Reserve Bank members were removed or the method of their selection were revised (*id.* at 12A-13A).[3]

Finally, the court of appeals rejected petitioner's contention that he had standing as a bondholder. Although the court did not dispute that the value of petitioner's bonds might be affected by the Committee's

[2]The court ventured no opinion on whether, if petitioner were to introduce a bill of impeachment, "the House of Representatives, or the Senate, would reject such a bill on jurisdictional grounds, or what course a court might take if confronted with such a rejection as a ground for standing" (Pet. App. 15A n.21).

[3]Petitioner has recognized the validity of the court of appeals' analysis and has abandoned his claim of injury to his interest in legislative regulation of monetary policy (Pet. 13 n.6).

monetary policies, it noted that there was no allegation of any specific injury to petitioner's bonds as a result of the claimed illegality in the Committee's composition (Pet. App. 17A) or any allegation that petitioner would benefit in his status as a bondholder by virtue of the removal or presidential appointment of the Reserve Bank members (*id.* at 17A-18A). Distinguishing *Buckley* v. *Valeo*, 424 U.S. 1 (1976), the case chiefly relied on by petitioner and the dissenting judge,[4] the majority pointed out that the plaintiffs there had sought an injunction prohibiting the Federal Election Commission from enforcing the Federal Election Campaign Act so long as its members were improperly appointed, an injunction that, "at least arguably, was of benefit to those plaintiffs who intended to run for office in the 1976 election and whose rights in that campaign would, to a significant degree, be adjudicated by the FEC" (Pet. App. 20A). Here, by contrast, petitioner did not demonstrate a personal stake as a bondholder "so sufficient that he would benefit from a favorable decision on the merits" (*id.* at 19A).

ARGUMENT

The court of appeals correctly held that petitioner lacked standing to challenge the composition of the Federal Open Market Committee. The court's opinion, on which we substantially rely, is fully consistent with the standing principles enunciated in *Simon* v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26 (1976), since petitioner failed to allege any specific injury in fact to his legislative or economic interests. Moreover, to the

[4]Chief Judge Wright read *Buckley* to support petitioner's argument that he had standing as a bondholder and therefore had no occasion to consider petitioner's impeachment or legislative power theories (Pet. App. 23A-27A).

extent that petitioner did allege a speculative, generalized injury to his interests as a bondholder—interests shared by millions of members of the general public—he made no attempt to show that these interests would be affected as a result of obtaining the relief he sought. Hence, the dismissal of petitioner's complaint for lack of standing raises no significant legal issue and does not warrant further review.

1. Contrary to petitioner's contention (Pet. 18), there is no conflict between the decision of the court of appeals and *Buckley* v. *Valeo*, 424 U.S. 1 (1976), *Palmore* v. *United States*, 411 U.S. 389 (1973), or *Glidden Co.* v. *Zdanok*, 370 U.S. 530 (1962). Petitioner incorrectly construes those decisions as holding that the legal composition or authority of a governmental tribunal or body may be challenged in an Article III court by any person who alleges that his interests "can" be adversely affected by the tribunal or body, without any need to show that the relief sought would indeed eliminate or ameliorate a specific injury. Rather, the Court held only that "parties *with sufficient concrete interests at stake* * * * have standing to raise constitutional questions of separation of powers with respect to an agency *designated to adjudicate their rights*." *Buckley* v. *Valeo*, *supra*, 424 U.S. at 12 n.10 (emphasis added).

In *Buckley*, for example, the plaintiffs sought an injunction prohibiting the Federal Election Commission from enforcing the campaign contribution limitations of the Federal Election Campaign Act while its membership was improperly constituted. As the court below noted, that relief arguably would have benefited those plaintiffs who intended to run for office in the 1976 election, who (in effect) would have been relieved of the obligation to comply with the campaign contribution limitations and

other restrictive provisions of the Campaign Act (Pet. App. 20A). Indeed, it is significant that the Court concluded, after a brief discussion of the standing matter, only that "at least some of the [plaintiffs] have a sufficient 'personal stake' to maintain the lawsuit." *Buckley* v. *Valeo*, *supra*, 424 U.S. at 12.

Chief Judge Wright suggests in dissent (Pet. App. 27A) that the plaintiffs in *Buckley* could not have received a benefit from an injunction against continued FEC operations because this Court eventually determined to stay its judgment for 30 days so as not to "interrupt[] enforcement of the provisions the Court sustains." 424 U.S. at 143. But the Court's decision, in the interest of orderly administration of the Campaign Act, to stay temporarily its injunction against future operation of the Commission to allow Congress the time to remedy the constitutional defects was no more relevant to the plaintiffs' standing than a denial of relief on the merits. Standing, of course, depends on the relief *sought* by the plaintiff, not on the relief ultimately granted. "[W]hen a plaintiff's standing is brought into issue the relevant inquiry is whether * * * the plaintiff has shown an injury to himself that is likely to be redressed by a favorable decision." *Simon* v. *Eastern Kentucky Welfare Rights Organization*, *supra*, 426 U.S. at 38. The plaintiffs in *Buckley* requested a permanent injunction against enforcement of the Act by the Commission,[5] and that relief unquestionably would have been of substantial, concrete benefit to them.

Palmore and *Glidden* also illustrate the requirement that a litigant must personally benefit, even if only temporarily, from the relief sought. Palmore, a defendant

[5]If Congress had chosen not to reestablish the Commission in accordance with the Court's opinion, that indeed would have been the relief ultimately obtained.

convicted of a felony by the Superior Court of the District of Columbia, challenged his conviction on the ground that the Superior Court, which was not created under Article III of the Constitution, lacked the legal power to try him. His standing to raise this issue was clear, for acceptance of his argument would have required a reversal of his conviction, even if it may have led to a new trial later before a competent tribunal. Similarly, in *Glidden* a company that had lost an appeal before a divided panel of the court of appeals argued in this Court that the judge who cast the deciding vote and wrote the court's opinion had not been appointed pursuant to Article III and thus was not empowered to hear the appeal. Again, had this Court agreed with that contention, it would have granted the relief sought, *i.e.*, it would have reversed the court of appeals' decision and would have remanded for rehearing before a proper panel. The litigant in *Glidden*, as in *Palmore*, would have benefited directly and immediately from the reversal of an adverse decision and a renewed opportunity to obtain a favorable disposition.[6]

As petitioner argues (Pet. 18), there was of course no requirement in *Buckley*, *Palmore* or *Glidden* that the party challenging the composition of the judicial or administrative body establish that he would have obtained more favorable treatment from a legally empowered tribunal or that he was likely to fare better on remand. Each of these parties, however, had an undeniable, important stake in vacating an existing adverse decision that would have deprived him of liberty or property and in receiving another chance to obtain a more satisfactory

[6]In both cases this Court disagreed with the petitioners on the merits and accordingly affirmed.

result (as in *Palmore* and *Glidden*) or in avoiding enforcement of a restrictive statute (as in *Buckley*). Here, in contrast to *Buckley*, *Palmore*, and *Glidden*, petitioner essentially concedes that the judicial relief he seeks (removal or changing the method of selection of the five Reserve Bank members of the Committee) would have no effect on the value of his bonds, much less that such relief would be likely to enhance their value. In sum, petitioner shares "only the generalized interest of all citizens in constitutional governance." *Schlesinger* v. *Reservists Committee to Stop the War*, 418 U.S. 208, 217 (1974).

2. The court of appeals also correctly held that petitioner lacked standing as a legislator to challenge the Committee's composition. The statute providing for service on the Committee by five representatives of the Reserve Banks certainly does not limit the impeachment power of the House of Representatives, and petitioner is free to initiate impeachment proceedings against Committee members at any appropriate time.[7] Petitioner has suggested only a theoretical impediment to possible impeachment—that the House would conclude, if a case ever were to arise, that "de facto officers are jurisdictionally beyond the reach of that power" (Pet. 12). He has made no showing either that he is currently being frustrated from exercising his power to initiate impeachment of any Reserve Bank members (see note 7, *supra*) or that a judicial declaration about the de facto or de jure status of the members is in fact necessary to secure that power.[8] Thus, as the court below remarked, petitioner's

[7]He would, of course, have to await such time as he has evidence that an impeachable offense has been committed. Petitioner does not contend that he now possesses such evidence.

[8]Even if other members of Congress should decline to approve any attempt by petitioner to secure a vote on a bill of impeachment, that would simply give him a grievance against his fellow legislators. "[N]o supposed impairment of his legislative functions is due, in any part, to the actions or omissions of [respondents]" (Pet. App. 15A).

complaint "is, in actuality, nothing more than 'a request for an advisory opinion in clear violation of Article III limitations' " (Pet. App. 15A). See *Muskrat* v. *United States*, 219 U.S. 346 (1911).

3. Finally, there is nothing to petitioner's claim that the district court ignored genuine issues of material fact respecting his standing as a bondholder and that its dismissal of his complaint for lack of standing therefore "so far departed from the accepted and usual course of judicial proceedings * * * as to call for an exercise of this court's power of supervision" (Pet. 19).

Petitioner misconstrues the holding of the courts below. Neither court rejected petitioner's contention that the Committee's activities are capable of influencing the value of his bonds. The courts accepted that allegation but ruled that the relief sought by petitioner would not increase or affect that value.[9] Petitioner has offered

[9]The government's position on this matter is not inconsistent with the affidavits and statements submitted in *Federal Open Market Committee* v. *Merrill*, No. 77-1387. The government has never denied that the Committee's actions are significant to the economy and affect interest rates, although it has argued that various factors other than open market operations also have a major effect on the value of bonds and other financial instruments. By the same token, the government's denial that the Committee votes to increase or decrease "prevailing interest rates" (Pet. 15) was accurate. As we noted in our brief in *Merrill* (pages 8-12), the Committee regularly takes a number of actions that affect the supply of money, but the interest rates that prevail, such as those that govern the value of petitioner's bonds, are set by the market, which the Committee's decisions influence but do not control. Moreover, petitioner's suggestion that the court of appeals' decision was based on a misconception, fostered by the government, concerning the Committee's importance to the economy

nothing to suggest that this conclusion is erroneous. Since that was the question dispositive to petitioner's standing as a bondholder, and since there were no genuine issues of material fact respecting it, the court of appeals correctly affirmed the dismissal of petitioner's complaint. Resolution of the standing issue would not have been aided in any way by the presentation of evidence concerning the general relationship between open market operations and the value of bonds.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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is belied by the court's statement (Pet. App. 3A) that "[t]he most flexible, and perhaps the most important, of these monetary policy tools is the open market instrument."

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